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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by Human Rights Advocates Inc., a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[19 March 1996]

Violations of the rights of migrant workers

1. For years, the Commission on Human Rights has voiced its concern over the urgent need to protect the rights of migrant workers around the world. In response to this, by its resolution 45/158 on 18 December 1990, the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention). In order for it to enter into force, the Convention provides that 20 States must ratify it.

2. In resolutions 1994/17 of 25 February 1994, 1993/89 of 10 March 1993 and 1992/81 of 6 March 1992, the Commission on Human Rights recognized that in spite of the establishment of the Convention, further efforts were needed to protect the rights of migrant workers and their families. The Commission urged Member States to guarantee protection of these rights by ratifying the Convention. Despite their urgings, only five States, Chile, Morocco, Mexico,

Seychelles and the Philippines, have signed the Convention and only two States, Morocco and Seychelles have ratified it. 1/ Thus, as of today, the Convention is completely ineffective.

3. As was revealed during the drafting debates, many delegates voiced their concerns and raised their objections to the Convention. 2/ For these reasons, it appears unlikely that the Migrant Workers' Convention will be further ratified.

4. The International Labour Organization (ILO) estimates that the number of migrant workers worldwide is around 25 million. 3/ While ratification of the Migrant Workers' Convention remains stagnant, violations of the rights of migrant workers continue to be perpetrated on a massive scale. Of great concern is the resurgence of "sweatshop" conditions in the garment industry. In the United States, sweatshops are defined as employers that violate more than one federal or State labour law regarding overtime, minimum wage, occupational safety and health, child labour, workers' compensation, industry registration or industrial homework. 4/ Migrant workers, both legal and illegal, and particularly women, are extremely vulnerable to becoming exploited labour working under such "slave-like" conditions.

5. There are approximately 1 million garment workers in the United States. Most of them are Asian or Hispanic women who have recently immigrated to the United States. 5/ According to the United States General Accounting Office, two thirds of New York's 7,000 garment shops are reported to be sweatshops, and labour officials estimate that one fifth of the apparel factories in Los Angeles are underground. 6/ Factory employers take advantage of the workers' legal status, naivety and cultural alienation in an attempt to win manufacturers' sewing contracts with the lowest bids. 7/

6. Workers are generally paid by the piece, earning as little as $1.00 per hour; well below the minimum wage of $4.25 per hour. 8/ Many workers claim that they are owed back wages from employers who have since closed their factories. It is common for sweatshops to close and later reopen under another name in order to avoid paying workers' wages. 9/ The Labor Department states that such operations are thriving in centres of the garment industry such as New York, Miami, El Paso and Los Angeles, and also in more rural areas such as parts of Pennsylvania and the South. 10/ The following are specific examples of abuses documented throughout 1995.

7. Brooklyn, New York: A 44-year-old immigrant from China works 12 hours a day, 7 days a week, earning less than $2.50 an hour sewing garments. The factory operates inside a two-storey building with no windows and poor ventilation. 11/

8. Queens, New York: An industrial building containing three garment shops on different floors has fire exits that are sealed shut by metal gates with large padlocks. 12/

9. New York, New York: Investigators discover that out of 37 garment workers, only 18 had time cards. This is a tell-tale sign that workers are being paid off the books at below minimum wage. At another shop within the same building, an owner is cited for employing minors. 13/

10. Sunset Park, New York: In a dim and dusty warehouse, red and blue rags cover all four windows, completely shutting out any natural light. Rows of middle-aged Chinese women sit hunched over sewing machines, working seven days a week at approximately 65 cents per hour. Health conditions are poor due to lack of proper ventilation. 14/

11. Various Midwestern Sates: A sweep of several contract sewing shops by the Labor Department turned up many violations of federal minimum wage laws, as well as overtime laws. Violations were found in Chicago, Cincinnati, Cleveland, Indianapolis and South Bend, Indiana. 15/

12. Los Angeles, California: Eight suspects were charged with illegally transporting, harbouring and forcing 56 Thai immigrants into years of involuntary servitude as low-paid workers in a garment factory over a period of seven years. The eight charged were alleged to have extorted money from the Thai workers in exchange for safe passage to the United States. Upon arrival in the United States, the immigrants were placed in the factory and forced to work up to 17 hours a day at $1.60 per hour to pay for their transportation. Some workers who had eventually paid off their debt were still forced to stay. The eight accused were eventually reduced to seven and all seven pleaded guilty to violating Federal civil rights laws. 16/ Also in Los Angeles, United States Immigration and Department of Labour officials raided three garment factories and found 51 illegal immigrants from Mexico, El Salvador, Honduras, Thailand and the Lao People's Democratic Republic. The workers were forced to work long hours sewing clothes and were paid meagre wages based on their work product. 17/

13. Dallas, Texas: Department of Labor investigators discovered a sewing operation in the Dallas suburb of Garland. The investigation revealed that for the last two years, none of the workers had been paid overtime despite working 10 hours a day, 6 days a week. 18/

14. Central America and the Caribbean: In San Salvador, El Salvador, the trade zone is a huge complex of sweatshops surrounded by cinder block walls, barbed wire and armed guards. Throughout Central America and the Caribbean, the women who work in these factories typically earn less than one dollar an hour sewing clothes destined for the United States. For most of them, the money they earn is not enough to supply them with adequate food and shelter for themselves and their children. Infants and toddlers are commonly fed rice water or coffee instead of milk which is too expensive. 19/

15. Thailand: Although the Constitution generally prohibits forced or compulsory labour, it has been reported that there are a number of sweatshops in the informal sector that physically restrain workers from leaving the premises. Authorities cannot estimate how many of these factories exist, but the increase in illegal immigrants, particularly from Myanmar, increase the opportunity for such abuse. For the past several years, Thailand has been cited by the ILO for violating prohibitions against forced child labour, especially child prostitution. 20/

16. Guangzhou, China: Guangzhou is the provincial capital of Guangdong, China. In 1990, Guangzhou estimated a total of 639,000 migrant workers. Many of these migrants are females from rural China who come to work in the many

sweatshops, producing goods for export. As always, among all of the work opportunities that are available to migrant workers, the positions in manufacturing tend to pay the least. 21/

17. Shenzhen, China: In Shenzhen, approximately 300,000 Chinese migrant workers, almost all of them women in their late teens and early twenties, work in hundreds of factories making and packaging toys to be exported to America and Europe. Factories in Shenzhen also produce products as diverse as clothes and computer keyboards. The average wage in these factories is $75-$85 per month. Most of the women live in fenced-in concrete dormitories sleeping five to eight women per room. In 1993, a faulty fuse in one of the toy factories caused a fire which killed 87 workers. The workers had been locked in the factory because the owners feared the workers might steal some of the toys. 22/

18. Beijing, China: In Zhejiang Village, a migrant community on the outskirts of Beijing, approximately 100,000 migrant workers have settled to work in garment sweatshops, food stalls, clinics and nursery schools. Residents of Beijing blame much of the city's problems on these migrant workers and discriminatory attitudes towards them run high. 23/

19. The Migrant Workers' Convention provides for the protection of a broad range of rights related specifically to the unique status of migrant workers. However, because of its breadth, States have indicated that they fear the consequences of ratifying this unique Convention. It has also been suggested that the Migrant Workers' Convention is repetitious and reformulates rights already granted in other United Nations instruments. 24/ Because of the continuing violations of the rights of migrant workers around the world, the Commission must take action to protect migrant workers' rights through avenues that are presently available. These include:

20. The International Labour Organization: In the Convention concerning Migration for Employment (No. 97), the Convention concerning Equality of Treatment (Social Security) (No. 118) and the Convention concerning Migrant Workers (Supplementary Provisions) (No. 143), the ILO has recognized and provided for the special protections required by migrant worker communities. Regular and systematic monitoring of States parties' compliance with ILO treaties makes the ILO one of the most effective international mechanisms for the protection of human rights. The ILO may also accept complaints of treaty violations by government bodies, trade unions or employers' associations, or delegates to the International Labour Conference. 25/

21. The United Nations Educational, Scientific and Cultural Organization: UNESCO has adopted many recommendations, conventions, and declarations concerning human rights in the areas of education, science and culture. UNESCO had devoted a great part of its programme concerning migrants to furthering the educational and cultural rights of migrant workers and their families. 26/ In order to monitor States' compliance with UNESCO instruments, UNESCO reviews periodic reports by States parties, and may also consider communications by individuals and NGOs alleging human rights violations within their area of competence. 27/

22. The Human Rights Committee: Many of the specific rights enumerated in the Migrant Workers' Convention are also included in the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee is the treaty body created to monitor States' compliance with the ICCPR through periodic reports submitted by States parties. They may also consider communications by individuals living and working in a foreign country, alleging violations of their basic human rights. For example, in 1988, a Spanish seaman submitted a communication alleging that he, along with 222 other foreign sailors, was wrongfully terminated by a private Netherlands shipping company. 28/ The Committee also considered a communication by a French national living and working in Madagascar who alleged that he was arbitrarily arrested and detained. 29/

23. Committee on Economic, Social and Cultural Rights: As the counterpart to the ICCPR, the International Covenant on Economic, Social and Cultural Rights also offers some protection to the rights of migrant workers. However, the Convention allows for "developing" countries to determine the extent to which they wish to guarantee economic rights to non-nationals. The Committee on Economic, Social and Cultural Rights monitors compliance with the Covenant by examining reports submitted to it by States parties on the measures they have adopted to further the protections offered by the Convention.

24. Committee on the Elimination of Racial Discrimination: The International Convention on the Elimination of All Forms of Racial Discrimination is premised on the principle of non-discrimination in terms of rights and restrictions on the basis of race. Accordingly, this Convention is a valuable avenue through which migrant workers may defend their rights. CERD supervises compliance with the Convention by reviewing periodic reports submitted by States parties, as well as considering communications from individuals who claim that their rights covered by the Convention have been violated. In relation to migrant workers, the Committee has considered a communication written by a Turkish national residing in the Netherlands who alleged that her employer made discriminatory statements towards her in his application to a Dutch court to terminate her employment contract. 30/

25. In the light of the tremendous need for international protection of the rights of migrant workers, and considering the ineffective status of the Migrant Workers Convention, Human Rights Advocates asks that the Commission request that the Secretary-General gather information regarding violations of the rights of migrant workers and members of their families from the various United Nations bodies discussed above and present a report of his findings to the Commission at its fifty-third session. Additionally, Human Rights Advocates asks that the Commission request the Secretary-General to obtain information on the measures these groups have taken to ensure that migrant workers' rights are being protected. We ask that the Commission take these steps as part of an effort to coordinate the activities of the various United Nations bodies in order to promulgate better protection for migrant workers' rights.

Notes

1/ Multilateral Treaties Deposited With the Secretary-General, Status as at 31 December 1994, ST/LEG/SER.E/13 at 204.

2/ Delegates were concerned that the Convention encourages illegal migration, and that it gives privileged status to migrant workers over nationals. Furthermore, delegates argued that the Convention protects the rights of undocumented workers beyond what some States envisioned, and objected to the broad definitions set forth in the Convention. Report of the open-ended working group on the elaboration of an international convention on the protection of the rights of all migrant workers and their families [hereinafter Working Group Report], United Nations document A/C.3/40/1 (1985).

3/ "Nations urged to legalize migrant labor", United Press International, 10 September 1995.

4/ Morton Allen Associates, "Sweatshop working conditions in the U.S. garment industry", Industrial Health & Hazards Update, June 1995.

5/ Dick Meister, "Government wants to end sweatshop era", San Francisco Examiner, 21 February 1995, at A17.

6/ Christina Nifong, "U.S. garment industry faces crossroads", Christian Science Monitor, 13 November 1995, at 9.

7/ Bob Herbert, "How hunger helps keep down the prices of clothes", Rocky Mountain News, 17 October 1995, at 28A.

8/ Mark Smith, "Texas garment industry suffers: overseas labor, illegal wages kill another factory", Houston Chronicle, 6 December 1995, at 1; Meister, supra note 5.

9/ Monte Williams, "Labor Department hears tales of sweatshops, restaurants, and fear", New York Times, 6 August 1995, at sect. 13, p. 7, col. 1.

10/ Nifong, Supra note 6.

11/ Alan Finder, "Hard labor - a special report: Despite tough laws, sweatshops flourish", New York Times, 6 February 1995, sect. A, p. 1, col. 2.

12/ Ibid.

13/ Ibid.

14/ Jane H. Lii, "65 cents an hour - a special report: Week in a sweatshop reveals grim conspiracy of the poor". New York Times, 12 March 1995, at sect. 1, p. 1, col. 1

15/ "Sweep of midwest sweatshops nets minimum wage violations", Daily Labor Report, 19 April 1995.

16/ "Feds charge eight Thais in alleged sweatshop ring", Reuters Limited, 3 August 1995: "Thai workers in U.S. tell of lives as slaves", Reuters Limited 4 August 1995: "7 Thais enter guilty pleas for detention in sweatshop", New York Times, 11 February 1996, at sect. 1, p. 39, col. 1.

17/ "Garment factory owners indicted", Los Angeles Times, 9 September 1995, at A20.

18/ "Labor Secretary issues subpoena to identify retailers, others in investigation that reveals exploitation at Dallas sweatshop", U.S. Newswire, 7 November 1995.

19/ Letta Tayler, "Worker abuse allegations strain U.S.-Salvador relations", The Fresno Bee, 31 December 1995, at C1; Bob Herbert, "How hunger helps keep down the price of clothes", Rocky Mountain News, 17 October 1995, at 28A.

20/ Thailand Human Rights Practices, 1994, United States Department of State.

21/ "When you think China and consumers, think of Guangdong", Market Asia Pacific, 1 March 1995, vol. 4, No. 3.

22/ Steven Mufson, "Santa finds a bargain in China: Low-paid workers make toys by the millions", The Washington Post, 24 December 1995, at A01.

23/ Maggie Farley, "China tries to control nations migrant workers", Los Angeles Times, 26 December 1995, at A1.

24/ Working Group Report, supra note 2.

25/ Lee Swepston, "Human rights complaint procedures of the International Labour Organization", in Guide to International Human Rights Practice, second edition, 1992

26/ "Migrant workers", General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, sixty-sixth session, 1980.

27/ Stephen P. Marks, "The Complaint Procedure of the United Nations Educational, Scientific and Cultural Organization", in Guide to International Human Rights Practice, second edition, 1992.

28/ F.G.G v. The Netherlands, Communication No. 209/1986, in Selected Decisions of the Human Rights Committee Under the Optional Protocol, vol. 2, United Nations document CCPR/C/OP/2.

29/ Mannel v. Madagascar, Communication No. 155/1983, ibid.

30/ A/43/18.